

CITY OF CARMEL COMMON COUNCIL

ADD-ON

FOR

January 22, 2007

SPECIAL MEETING

Ordinance D-1843-07: An Ordinance of the Common Council of the City of Carmel, Indiana, Regulating
Massage Establishments and Massage Technicians; Sponsor(s): Councilor(s) Sharp and Carter

Richard L. Sharp

1481 Stormy Ridge Ct.
Carmel, IN 46032

To: Diana Cordray

Cc: Jim Brainard, Kevin Kirby, Fred Glaser, Joe Griffiths, Mark Rattermann,
Ron Carter, Brian Mayo, Bruce Smith, Lois Fine

From: Rick Sharp

Date: January 22, 2007

Re: Rationale for agenda add on item

I am requesting that proposed Ordinance D-1843-07 be added to the council agenda for tonight's meeting

This item is very important to the business of the city and the welfare and safety of our citizens. I know your office has copies of this ordinance and I appreciate your assistance.

By copy of this memo I am notifying the Mayor, members of the Council and the press.

Please feel free to call with any questions.

ORDINANCE NO. D-1843-07

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF CARMEL, INDIANA,
REGULATING MASSAGE ESTABLISHMENTS AND MASSAGE TECHNICIANS**

WHEREAS, the provision of massage therapy is a multi-billion dollar industry that employs over 250,000 massage therapists in the United States and provides therapeutic massages to over 45 million Americans annually; and

WHEREAS, organizations such as the American Massage Therapy Association and the Commission on Massage Therapy Accreditation provide education, training, accreditation and oversight to the massage industry; and

WHEREAS, therapeutic massage has been credited with soothing chronic back pain, lowering anxiety and high blood pressure, easing post-operative pain and providing other health-related benefits; and

WHEREAS, despite the benefits of therapeutic massage, the very nature of the practice provides opportunities for unscrupulous individuals to use massage establishments as a “cover” for illegal brothels and other prostitution services; and

WHEREAS, unregulated, such operations, acting under the guise of “massage establishments,” tend to attract undesirable transients, adversely affect property values, cause an increase in crime, -- especially prostitution --, result in an increase in unsanitary litter such as used condoms, encourage the practice of unsanitary sex, discourage legitimate businesses, and create other equally undesirable secondary effects; and

WHEREAS, the risk to communities of brothels and other prostitution services operating under the guise of legitimate massage establishments has caused at least thirty-seven (37) states, but not Indiana, to regulate such establishments; and

WHEREAS, when a State does not regulate massage establishments, that duty falls to its local municipalities; and

WHEREAS, the City of Carmel now wishes to protect and further the health, safety and welfare of its residents and guests by regulating massage establishments and technicians operating within its corporate limits and, in furtherance of this purpose, finds that the following ordinance should be and the same is hereby adopted and shall be added to the Carmel City Code as new Code Section 4-21.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Carmel, Indiana, as follows:

Section 1. The foregoing Recitals are fully incorporated herein by this reference.

Section 2. Chapter 4, Article 1, Division III, Section 4-21, is hereby added to the Carmel City Code and shall read as follows:

"Sec. 4-21. Massage establishments and technicians.

(a) *Definitions.* As used in this Section:

(1) ***Massage*** means any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating primarily the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus, with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, ointments, or other similar preparations commonly used in the practice of massage.

(2) ***Massage establishment*** means any establishment having a fixed place of business where any person engages in, conducts, carries on, or permits to be engaged in, conducted or carried on, massages.

(3) ***Massage technician*** means any person who, for any form of consideration whatsoever, gives or administers a massage to a patron.

(4) ***Person*** means any person, association, firm, partnership, limited liability company or corporation.

(5) ***Patron*** means any person who receives a massage from a massage technician.

(6) ***Recognized school of massage*** means any school or institution of learning which has for its purpose the teaching of the theory, ethics, practice, method, profession and/or work of massage technicians and that has been approved by the American Massage Therapy Association, or has a program which requires a resident course of study of not less than five hundred (500) hours to be given in not less than six (6) calendar months before a student is furnished with a diploma or certificate of graduation from such school or institution of learning showing the student's successful completion of said course. Persons or entities offering a correspondence course not requiring actual physical attendance at class shall not be deemed a recognized school of massage.

(b) *Exemptions from Section.* This Section shall have no application to and no effect on the following:

(1) Hospitals, nursing homes, sanitariums and other health care facilities licensed by the State of Indiana and physicians, surgeons, chiropractors, osteopaths and physical therapists licensed or registered to practice their respective professions under the laws of the State of Indiana as well as nurses registered under the laws of the State of Indiana when acting under their direction and control.

(2) Barbershops and beauty parlors, barbers and beauticians licensed under the laws of the State of Indiana, provided that any such massage provided is limited to the head, scalp, hands, neck and feet.

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The initial draft of this document was prepared by Douglas C. Haney, Carmel City Attorney, on January 22, 2007. Any changes thereafter made to this document are the sole responsibility of the document sponsor.

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(3) Accredited schools and colleges and coaches and trainers employed thereby while acting within the scope of their employment.

(4) Not-for-profit community-supported agencies authorized to operate in Indiana.

(c) *Massage establishment license required; procedure for filing application; issuance.* It shall be unlawful for any person to engage in, conduct, or carry on, in or upon any premises located within the corporate limits of the City, a massage establishment without first obtaining and retaining a valid license issued pursuant to the provisions of this Section.

(1) Application; contents:

a. An application for a license to operate a massage establishment shall be filed with the Carmel Board of Public Works and Safety upon forms provided by the Office of the Carmel Clerk-Treasurer. Such application shall be verified under oath.

b. The filing of an application for a license to operate a massage establishment does not authorize any person to operate a massage establishment until such license has been granted.

c. Each license applicant shall furnish the following information:

1. The legal name of the applicant.

2. The present address and telephone number of the applicant.

3. The applicant's previous addresses, if any, for a period of three (3) years immediately prior to the date of the application, and the dates during which the applicant resided in and/or operated from each such address.

4. The applicant's date and place of birth.

5. Three (3) passport size photographs each one (1) inch by one (1) inch in size and taken of the applicant within six (6) months of the date of the application.

6. The applicant's business, occupation and employment history for the three (3) years immediately preceding the date of the application, including, but not limited to, whether the applicant previously operated a massage establishment under a permit or license issued by another city or State, and whether any such previous license was ever suspended or revoked and the reasons therefor.

7. All felony, misdemeanor and infraction convictions, including ordinance violations but excluding traffic violations, with a brief statement of the nature of each conviction and the jurisdiction in which the conviction occurred.

8. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, together with the state and date of incorporation and the names and residential addresses of each of its current officers, directors and each stockholder who owns fifteen (15) percent or more of any class of its stock. The application shall be verified by an officer of the corporation.

9. If the applicant is a partnership, the application shall set forth the names and residential addresses of each of the partners, including limited partners. The application shall be verified by each partner. If one or more of the partners is a corporation, the provisions of this Section pertaining to a corporate application shall also apply to the corporate partner.

10. If the applicant is a limited liability company, the application shall set for the names and residential addresses of each member. The application shall be verified by a member.

11. If the applicant is neither a corporation nor a partnership nor a limited liability company, the application shall set forth the full name and address of the applicant and shall be verified by the applicant.

12. Each application for a massage establishment license shall set forth the establishment's proposed place of business and the facilities therefor, together with a detailed description of the nature and scope of the proposed business operation.

(2) Review and recommendations: All applications for licenses issued under this Section shall be referred by the Clerk-Treasurer to the proper City offices for their review and comment, and each shall report its findings to the Board of Public Works and Safety. Applicants shall cooperate with any lawful review conducted pursuant to the provisions of this Section and shall permit access to the proposed place of business and facilities in conjunction with any such review.

(3) Public hearing and notice: Upon the filing of an application, the Board of Public Works and Safety shall fix a time and place for a public hearing thereon. Written notice of the hearing shall be given to the applicant. Due notice shall also be given to the general public by publication of such notice one (1) time in a local newspaper of general circulation. Any interested person may file with the Board of Public Works and Safety a memorandum in support of or in opposition to the issuance of a license.

(4) Granting of license: Within thirty (30) days from the receipt of a fully completed massage establishment license application, and after proper publication and receipt of the aforesaid recommendations, the Board of Public Works and Safety shall conduct a public hearing and shall instruct the Clerk-Treasurer to issue a license to operate a massage establishment if it is found that:

- a. The application reasonably and in all material respects conforms to the provisions of this Section.
- b. The applicant has not knowingly made any material misrepresentations in the application.
- c. The applicant has reasonably cooperated in the City's review of the application.

d. The massage establishment, as proposed by the applicant, would comply with all applicable laws, including, but not limited to, the City's building, zoning, health, nuisance, fire and safety laws and regulations.

e. The applicant, if an individual, or any stockholder, officer or director if the applicant is a corporation, or any partner, including a limited partner, if the applicant is a partnership, or any member, if the applicant is a limited liability company, has not been convicted of any crime involving unlawful deviate conduct, deviate sexual conduct, or sexual conduct, as defined in Title 35 of the Indiana Code, within three (3) years prior to the date of the application.

f. The applicant has not had a massage establishment or comparable license denied or revoked for cause by the City or by any other city or governmental entity located in the United States within the three (3) years prior to the date of the application.

g. The applicant, if an individual, or an officer or director if the applicant is a corporation, or a partner, including a limited partner, if the applicant is a partnership, or a member, if the applicant is a limited liability company, is eighteen (18) years of age or older.

h. The applicant, if a corporation or other business entity and to the extent required by law, is licensed to do business and is in good standing in the State of Indiana.

i. The massage establishment, as proposed by the applicant, would comply with all the requirements of this Section.

j. The license fee has been paid in full.

(5) If the thirtieth day for a hearing on a license application falls on a Saturday, Sunday or legal holiday, the hearing may be held on the next following business day and still be considered timely under this Section.

(6) License fee:

a. The fee for an annual massage establishment license shall be One Hundred Twenty Dollars (\$120.00), payable to the Clerk-Treasurer at the time of issuance of said license.

b. An annual massage establishment license shall be effective from February 1 to January 31, inclusive, of the year for which the license is issued.

c. A massage establishment license shall include the following:

1. The name and address of the applicant.

2. The name and address of the massage establishment.

3. The date of issuance and the date of expiration.

(7) Denial: If a massage establishment license is denied by the Board of Public Works and Safety, that decision is final except to the extent any further appeal is provided by Indiana law.

(d) *Massage technician's license required.* It shall be unlawful for any person to act as a massage technician unless he/she has a valid license issued pursuant to the provisions of this Section.

(1) Application; contents:

a. An application for a license to act as a massage technician shall be filed with the Carmel Clerk-Treasurer upon forms provided by the Clerk-Treasurer's Office, and such application shall be verified under oath.

b. The filing of an application for a massage technician license does not authorize any person to perform any services as a massage technician within the City until such license has been granted.

c. Each applicant for a massage technician license shall furnish all information required by subsection (c)(1)(c) of this Section. In addition, the applicant shall furnish proof of the following:

1. A certificate from a medical doctor, licensed to practice in the State of Indiana, stating that the applicant has, within thirty (30) days immediately preceding the date of the application, been examined and found to be free of any contagious or communicable disease.

2. A diploma or certificate of graduation from a recognized massage therapy school, if any.

3. The massage establishment, if any, at which the applicant expects to be employed.

(2) Review and recommendations: All applications for massage technician licenses under this Section shall be referred by the Clerk-Treasurer to the proper City offices for review and comments, and each shall report their findings to the Clerk-Treasurer's Office.

(3) Granting of license: Within thirty (30) days of receipt of a fully completed application, the Clerk-Treasurer shall issue a massage license if it is found that:

a. The application reasonably and in all material respects conforms to the provisions of this Section.

b. The applicant has not knowingly made a material misrepresentation in the application.

c. The applicant has reasonably cooperated in the investigation of his/her application.

d. The applicant has not, within three (3) years immediately preceding the date of the application, been convicted of any crime of unlawful deviate conduct, deviate sexual conduct or sexual conduct as defined in Title 35 of the Indiana Code.

e. The applicant has furnished an acceptable diploma or certificate of graduation from a recognized school or, in lieu thereof, has demonstrated competence and proficiency to the reasonable satisfaction of the Clerk-Treasurer through continuous experience as a massage technician for a three-year period prior to the date of the application.

f. The applicant has not previously had a massage technician's or comparable license denied or revoked for cause by the City or by any other city or governmental entity in the United States within three (3) years of the date of the application.

g. The applicant is eighteen (18) years of age or older.

h. The license fee is fully paid.

(4) License fee:

a. The fee for an annual massage technician license shall be Fifty-Five Dollars (\$55.00), payable to the Clerk-Treasurer at the time of the issuance of such license.

b. The annual massage technician license shall be effective from February 1 to January 31, inclusive, of the year for which the license is issued.

(5) Denial: If a massage technician license is denied, the applicant may appeal to the Board of Public Works and Safety within thirty (30) days from the date the applicant received notice of the denial, and may further appeal said decision to the extent provided by Indiana law.

(e) *Facilities.* Every massage establishment shall maintain facilities meeting the following requirements:

(1) Zoning: Every massage establishment shall be operated or conducted only in a district wherein such an establishment is permitted by the Carmel Zoning Ordinance.

(2) Sign: A recognizable and legible sign shall be posted at the main entrance of the establishment identifying the establishment as a massage establishment. The sign shall comply with all applicable City ordinances and State laws.

(3) Security lockers: Every massage establishment shall be equipped with security lockers capable of being locked by the patron. A sufficient number of security lockers shall be provided so that each patron may properly secure and store his clothing and other personal valuables and effects.

(4) Separate facilities for male and female patrons: If male and female patrons are to be served by a massage establishment, its massage rooms, dressing facilities, restrooms and sauna rooms shall provide clearly marked separate facilities for male and female patrons. At a minimum, such separated facilities shall consist of the following: One (1) shower; one (1) washbasin; one (1) restroom facility; one (1) dressing facility and one (1) massage room incapable of being locked from the interior.

(5) Facilities for employees: A minimum of one (1) separate washbasin shall be provided in each massage establishment for the use of employees, which basin shall provide soap or detergent and hot and cold running water at all times and shall be located within or as close as practical to the area devoted to the performing of massage services. In addition, there shall be provided sanitary towels in permanently installed dispensers at each washbasin.

(6) Size and lighting: Minimum lighting shall be provided in accordance with the City building code, and in addition, at least one (1) artificial light of not less than forty (40) watts shall be provided in each room or enclosure where massage services are performed on patrons. Such rooms shall have at least fifty (50) square feet of clear floor area.

(7) Ventilation: Minimum ventilation shall be provided in accordance with the City building code.

(8) Equipment: All equipment necessary to properly furnish and maintain a massage establishment pursuant to the standards set forth by the American Massage Therapy Association shall be provided therein, such equipment being incorporated herein by this reference.

(9) Health code: All applicable health code provisions regulating business establishments in Indiana shall be complied with and are incorporated herein by this reference.

(f) *Operation.* Every massage establishment and every massage technician shall comply with the following operating requirements. These requirements shall be prominently and publicly displayed in English and in any other language the establishment deems advisable in a conspicuous place upon every premises licensed under this Section.

(1) All massage establishments shall commence operations no earlier than 7:00 a.m. and must cease operations no later than 10:00 p.m. No massage establishment shall operate on any day between the hours of 10:00 p.m. local time and 7:00 a.m. local time.

(2) All massage establishments and massage technicians therein shall prominently and publicly display on the premises their respective licenses and permits during all hours of operation.

(3) A list of services available and the cost of such services shall be posted in an open, public place on the premises of each massage establishment, and shall be described in readily understandable English language and such other languages as the establishment deems advisable. No owner, operator, responsible managing employee or manager shall permit, and no massage technician shall offer to perform, any services other than those so posted.

(4) Massage establishments shall at all times be equipped with an adequate supply of clean sanitary towels, coverings and linens. Clean towels, coverings and linens shall be stored in cabinets. Towels and linens shall not be used on or by more than one (1) patron unless they have first been laundered and disinfected. Disposable coverings and towels shall not be used on more than one (1) patron. Soiled linens and paper towels shall be deposited in approved receptacles.

(5) Wet and dry heat rooms, steam or vapor rooms or cabinets, shower rooms and compartments, restrooms and pools shall be thoroughly cleaned and disinfected as needed, and at least once during each day on which the premises are open, with a disinfectant. Bathtubs shall be thoroughly cleaned with a disinfectant after each use. All walls, ceilings, floors and other physical facilities in the massage establishment must be in good repair and maintained in a clean and sanitary condition.

(6) Instruments utilized in performing massage shall not be used on more than one (1) patron unless they have first been sterilized using approved sterilizing equipment. Massage table pads and reusable table coverings shall be disinfected between each massage with approved chemicals. All lotions, creams, ointments and other items and substances used during massages shall be stored in cabinets marked and reserved solely for such purpose.

(7) No person shall enter, be or remain in any part of a massage establishment while in the possession of, consuming or using any alcoholic beverage or drug, except pursuant to and in accordance with a doctor's prescription, and the owner, operator, responsible managing employee and/or manager shall not permit any such person to enter or remain upon such premises.

(8) Massages shall not be given to patrons who have open sores or other visual signs of contagious or communicable disease.

(g) *Inspections.* Building inspectors, firefighters and health officers, accompanied by such other governmental officials and officers as they reasonably feel are necessary to assist them in their duties, shall at least twice each year inspect each massage establishment located in the City for the purpose of determining whether the provisions of this Section and other applicable laws are being met. Such inspections shall be conducted after reasonable notice is given to the owner or operator of a massage establishment; they shall take place during the hours such establishment is open for business; and shall take place only upon the showing of proper credentials of such persons. All other lawful investigatory powers any officer or official may have shall not be limited or adversely affected by this paragraph.

(h) *Grounds for revocation or suspension of license:*

(1) Massage establishments and massage technicians shall be subject to all pertinent City and County ordinances, State of Indiana Statutes, Federal and all other applicable laws and the violation of any such laws shall be grounds for the suspension or revocation of their massage establishment license and/or massage technician license, as applicable.

(2) It shall be unlawful for any person to operate a massage establishment without first having a valid license therefor as required by this Section.

(3) It shall be unlawful for any person to act as a massage technician without first having a valid license therefor as required by this Section.

(4) It shall be unlawful for any person who operates a massage establishment to allow or permit any person to act therein as a massage technician without such person first having a license therefor as required by this Section.

(5) It shall be unlawful for any person to act as a massage technician within a massage establishment which does not have a license therefor as required by this Section.

(6) It shall be unlawful for any massage technician to massage or offer to massage the genital area of any patron or the nipple and areola area of the breasts of any female patron, or for any operator of a massage establishment to allow or permit such massage or offer to massage in such massage establishment, or for any patron to permit such massage upon his/her body.

(j) *Conducting in violation of Section deemed a nuisance.* Any massage establishment operated, conducted or maintained contrary to the provisions of this Section shall be unlawful and declared a public nuisance. The City Attorney or his designee may, in addition to or in lieu of prosecuting a civil action hereunder, commence an action for the abatement, removal or injunction thereof in the manner provided by law; and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or close such massage establishment and restrain and enjoin any person from operating, conducting or maintaining a massage establishment contrary to the provisions of this Section.

(k) *Penalty.* Any person who violates any provision of this Section shall, upon conviction, be subject to a fine of not less than Five Hundred Dollars (\$500.00) nor more than Two Thousand Five Hundred Dollars (\$2,500.00) per violation. A violation of any provision of this Section shall constitute a separate offense for each day such violation exists."

Section 3. This Ordinance shall be in full force and effect upon passage of the Common Council, execution by the Mayor and such publication as is required by law ("Effective Date"). However, any person or entity required to be licensed hereunder shall have sixty (60) days from the Effective Date to obtain said license.

Section 4. All prior ordinances or parts thereof inconsistent with any provision of this Ordinance are hereby repealed, to the extent of such inconsistency only, as of the effective date of this Ordinance. However, the repeal or amendment by this Ordinance of any other ordinance does not affect any rights or liabilities accrued, penalties incurred or proceedings begun prior to the Effective Date of this Ordinance. Those rights, liabilities and proceedings are continued and penalties shall be imposed and enforced under such repealed or amended ordinance as if this Ordinance had not been adopted.

Section 5. Should any provision or portion of this Ordinance be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provisions shall not be affected so long as they can, without the invalid provision, be given the effect intended by the Common Council in adopting this Ordinance. To this end, the provisions of this Ordinance are severable.

PASSED by the Common Council of the City of Carmel, Indiana, this ____ day of _____ 2007, by a vote of _____ ayes and _____ nays.

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COMMON COUNCIL FOR THE CITY OF CARMEL, INDIANA

Presiding Officer

Kevin Kirby

Joseph C. Griffiths, President Pro Tempore

Brian D. Mayo

Ronald E. Carter

Mark Rattermann

Fredrick J. Glaser

Richard L. Sharp

ATTEST:

Diana L. Cordray, IAMC, Clerk-Treasurer

Presented by me to the Mayor of the City of Carmel, Indiana, this _____ day of _____,
2007, at _____ O'clock, _____. M.

Diana L. Cordray, IAMC, Clerk-Treasurer

Approved by me, Mayor of the City of Carmel, Indiana, this _____ day of _____
2007, at _____ O'clock, _____. M.

James Brainard, Mayor

ATTEST:

Diana L. Cordray, IAMC, Clerk-Treasurer

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